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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1799 OF 2007
IN
SUIT NO.249 OF 2007

Simplex Engineering & Foundary Works Pvt.Ltd. Plaintiff

versus

Atlas Logistics Pvt.Ltd. Defendant

Mr.Rishabh Shah a/w Mr.Darshan Mehta i/by Dhruve Liladhar & Co. for plaintiff.

Mr.D.D.Madon, Sr.Adv. a/w Mr.Halai a/s Ms.Priya Agarwal i/by M/s.Halai & Co. for defendant.

CORAM : A.M.KHANWILKAR, J.

DATE : 22nd August 2007

PC :

1. Heard counsel for the parties. I am in agreement with the stand taken on behalf of defendant that it is too late in the day for the plaintiff to ask for the relief claimed in the present motion which, if granted, will have inevitable effect of praying for recall and/or setting aside of the order passed by this Court on 2nd March 2007 which was by consent of the parties, as is restated by the learned Judge in

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his order dated 10th August 2007. The order dated 26th February 2007 came to be modified by order dated 2nd March 2007 and which position has been restated in the order dated 10th August 2007 by the learned Judge. In such a situation, the only course available for the plaintiff is to ask for recall of the order dated 26th February 2007 and the consequential orders passed thereafter or challenge those orders, if permissible in law. I am not expressing any opinion on the correctness and contentions available to the plaintiff in that behalf. Suffice it to observe that so long as the order dated 26th February 2007, subsequently clarified on 2nd March 2007 and 10th August 2007 were to operate, there is no reason why indulgence can be shown to the plaintiffs by granting relief as prayed in the present motion. Hence, in my opinion, the relief claimed in the present motion, is ill-advised in the fact situation of the present case as referred to earlier. Hence, this motion is disposed of with liberty to the plaintiffs to take recourse to such remedy, as may be permissible in law.

(A.M.KHANWILKAR, J.)